MISSOURI HOUSE OF REPRESENTATIVES

REPORT OF THE INTERIM COMMITTEE ON

WATER-RELATED ISSUES

Representative Gary Wiggins, Chair
District 8
Representative Judy Berkstresser
District 141
Representative D. J. Davis
District 122
Representative John Griesheimer
District 109
Representative Daniel J. Hegeman
District 5
Representative Blaine Luetkemeyer
District 115
Representative Carol Jean Mays
District 50
Representative Bill L. Ransdall
District 148
Representative Randall H. Relford
District 6

Prepared by
Terry Finger, Senior Legislative Analyst

March, 2001

CAPITOL OFFICE
ROOM 303-A
STATE CAPITOL - HOUSE POST OFFICE
JEFFERSON CITY, MO 65101-6806
(573) 751-1042

DISTRICT ADDRESS
30093 STATE HIGHWAY P
NEW CAMBRIA, MO 63558
(816) 226-5619

COMMITTEES:
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JOINT COMMITTEE ON WETLANDS

MISSOURI
HOUSE OF REPRESENTATIVES

Gary Wiggins
Representative, 8th District

March, 2001

The Honorable James Kreider, Speaker
Missouri House of Representatives
State Capitol, Room 308
Jefferson City, Missouri 65101

Dear Mr. Speaker:

Pursuant to your charge, your Interim Committee on Water-Related Issues gathered information from a variety of sources during the fall. The committee was briefed by the Missouri Department of Natural Resources, the Missouri Public Service Commission, and the Office of the Public Counsel at meetings in Jefferson City on November 20 and December 11, 2000. The committee also heard public testimony at hearings conducted in Jefferson City on the same dates, and accepted written testimony from individuals who could not attend the hearings or wished to provide additional materials. The committee met on January 31, 2001, to discuss our findings and finalize our recommendations.

There was widespread interest and concern about several water-related issues, most notably territorial disputes between municipalities and public water supply districts, the authority of the Public Service Commission to phase in drinking water rate increases, the authority of local sewer districts to require potential customers to use their services, and the respective authorities of the Department of Health and Department of Natural Resources in regulating wastewater disposal in residential subdivisions. The committee expresses its gratitude to the Missouri Department of Natural Resources, the Missouri Public Service Commission, the Office of the Public Counsel, and to all the public water districts, municipalities, and citizens who provided vital information and assistance.

The committee has formulated several recommendations that could help ensure that Missourians will continue to receive high-quality, cost-effective drinking water and wastewater services. Enclosed herein is our report.

Sincerely,

Gary Wiggins

Gary Wiggins, Chair

Representative Gary Wiggins, Chair
District 8

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INTRODUCTION

In the last few years, several water-related issues have been of widespread concern in the state. Recent court cases and statutory changes have contributed to continued interest in these issues. As our municipalities and their surrounding regions continue to experience growth, territorial disputes have occurred between municipalities and public water supply districts. Considerable disagreement and discussion has also been focused on the procedures used to determine allowable rate increases by private water companies when they construct new facilities. Further, a recent court case has raised concerns over the financing of new sewer lines by determining that sewer districts cannot require potential customers to use their services. The regulation of on-site and centralized wastewater treatment systems in residential subdivisions also continues to be a point of discussion among developers.

In response to widespread interest in these topics, on September 22, 2000, the Honorable Steve Gaw, Speaker of the Missouri House of Representatives, appointed an interim committee to examine water-related issues. Members of the committee were Representative Gary Wiggins, Chair (D-8, New Cambria), Representative Judy Berkstresser (R-141, Crane), Representative D. J. Davis (D-122, Odessa), Representative John Griesheimer (R-109, Washington), Representative Daniel J. Hegeman (R-5, Cosby), Representative Blaine Luetkemeyer (R-115, St. Elizabeth), Representative Carol Jean Mays (D-50, Independence), Representative Bill L. Ransdall (D-148, Waynesville), and Representative Randall H. Relford (D-6, Cameron). This report includes an analysis based on information received from state agencies, public water supply districts, municipalities, and citizens, and the committee's findings and recommendations.

TESTIMONY and MAJOR ISSUES

The committee was briefed by the Missouri Department of Natural Resources, the Missouri Public Service Commission, and the Office of the Public Counsel at meetings in Jefferson City on November 20, 2000, and December 11, 2000. The committee also heard public testimony at hearings conducted on the same dates, with participation by citizens and representatives from public water districts and municipalities (see Appendix A). We also accepted written testimony from individuals who could not attend the hearings or wished to provide additional materials. Testimony centered around four basic water-related issues:

Territorial Disputes

Many witnesses, including representatives of public water supply districts and municipalities, described disputes that have arisen when territory within a water district is annexed into a municipality. In some cases, the affected parties reached an agreement that was mutually beneficial, but in other situations cases were decided by the courts. Several representatives from public water supply districts noted that districts cannot continue to lose high-density areas to municipalities and be left with only the customers that are most difficult and costly to serve. Without a secure revenue stream, districts may not be able to service their debt and serve remaining customers effectively. Representatives from municipalities noted that recent statutory amendments have made it very difficult to detach territory from a water district. Changes made to Sections 247.031 and 247.170, RSMo, in SB 741 from the 2000 legislative session require municipalities to pay the entire debt of the water district before territory can be detached.

The Department of Natural Resources proposed new statutes to allow formation of water services districts that provide coordinated drinking water, stormwater, and wastewater utilities. Although this proposal may eventually help address territorial disputes, many witnesses believed that the new statutes could make territorial issues even more confusing than they are currently, especially with regard to existing case law. They further noted the need for more stakeholder discussions before the proposed concept of water services districts was formally considered.

Most witnesses agreed that each territorial case is different and that there may not be a single statutory solution for all territorial disputes. Federal and case law must be considered in addition to state statutes. There are also regulations related to federal debt, and local financing must also be addressed. Some potential solutions may be found in the statutes for electric cooperatives and fire protection districts. Although the Public Service Commission does not regulate municipalities or public water supply districts, it does have the ability to settle territorial disputes if the affected parties are allowed to bring the dispute before the commission. Section 394.080, RSMo, currently contains such a provision for municipalities and rural electric cooperatives. The chair of the Public Service Commission also noted that the Clarence Cannon Wholesale Water Commission is a good model for regional development of water supply services.

Statutory Authority to Require Phase-in of Water Rate Increases

The chair of the Public Service Commission described procedures for establishing water rates and recent controversial water rate cases. The commission must approve the construction of new water plants; any needed changes in rates are discussed after construction. The Office of the Public Counsel believes that prudence reviews for new water plants should be done after construction, which leads to the best overall protection for consumers. Based on the experience of other states, pre-approval is more likely to lead to higher construction costs. The Office of the Public Counsel is also in favor of allowing the Public Service Commission to phase in large increases in water rates, as is currently allowed for electric rates in Section 393.155, RSMo. The public counsel believes that increases should be limited to 15% per year.

Mandatory Connection to Sewer System Extensions

The Department of Natural Resources noted that a recent court case, Moates, et al. v. Pulaski County Sewer District No. 1, determined that local sewer districts cannot require potential customers to use district services when sewer lines are extended. The decision was based on the premise that the Clean Water Commission, and not the local sewer district, has the authority to regulate wastewater discharges. If sewer districts lack the authority to enforce mandatory connections, the financing of sewer line extensions becomes questionable because the district cannot guarantee a minimum customer base and associated revenue from fee payments.

Regulation of Wastewater Treatment Systems in Residential Subdivisions

Several developers of residential subdivisions noted their difficulties in dealing with both the Department of Health (DOH) and the Department of Natural Resources (DNR) on regulation of wastewater treatment. They stated that a single set of clear regulations for subdivisions is needed.

The Department of Natural Resources noted that the roles of DOH and DNR in the regulation of residential sewage treatment were complicated by the passage of SB 446 in 1994, which gave DOH the authority to regulate most domestic on-site sewage disposal systems. DNR retained authority to regulate most sewage treatment plants and to grant approval of wastewater treatment plans for residential subdivisions. In June, 1996, DNR and DOH developed a Memorandum of Understanding to clarify these roles. That memo and the passage of SB 739 in 1998, which exempted lots of 5 or more acres from subdivision regulations, prompted a revision of DNR's subdivision regulations. A stakeholders' group of developers, realtors, lending institutions, regulatory agencies, and others developed the revision, which was finalized in March, 1999.

As a result of this agreement, all single family residential on-site systems, if regulated at all, are regulated by DOH. Residences on lots over 3 acres are exempt from statewide regulation, although counties are free to have stricter regulations. Currently, 55 counties have their own regulations. Single family residential on-site systems in residential housing developments are regulated by DOH or counties, as above, but DOH directs developers to first contact DNR to determine if on-site systems are feasible or if central sewers are required for the development.

This approval is only required for new developments of 7 or more lots with lot sizes smaller than 5 acres. If single family residential systems are feasible, they are regulated by DOH. If central sewers are required, they are regulated by DNR.

DOH has published their rules governing on-site sewage disposal systems and has developed procedures and licensing requirements for system inspectors. DNR has developed two Technical Bulletins that clarify their residential subdivision rules. They also have technical help available via telephone and internet. Most surveyors and engineering firms are well aware of these regulations and appear to support the recent revisions.

FINDINGS AND RECOMMENDATIONS

The committee recognizes the complexity of many of the water-related issues discussed during our hearings, and expresses its gratitude to the Missouri Department of Natural Resources, the Missouri Public Service Commission, the Office of the Public Counsel, and to all the public water districts, municipalities, and citizens who provided vital information and assistance. The committee recommends the follow actions:

1. Continued Discussions

Several of the water-related issues considered by the committee are very complex and clearly warrant further discussion by the affected parties. This is particularly true of territorial disputes between municipalities and public water supply districts and the proposal by the Department of Natural Resources to allow the formation of public water services districts. The committee recognizes the progress that has been made to date on territorial issues and encourages water districts and municipalities to continue substantive dialog. The committee also encourages the Department of Natural Resources to continue meeting with stakeholders to discuss the concept of water services districts before any legislative changes are formally proposed.

2. Public Water District Notice Requirements and Dissolution Payments

Several aspects of statutes governing public water supply districts require changes that are relatively noncontroversial. These changes include outlining public notice requirements when water districts seek to expand and distributing assets to rate payers rather than to property owners when a district is sold or dissolved. As a result of discussions among municipalities and public water supply districts, agreements were reached with regard to the need for these statutory changes. The committee agrees with these concepts and supports legislation implementing the necessary statutory changes. This legislation has been filed for the 2001 legislative session as part of HB 923 (See Appendix B, Item I).

3. The Public Service Commission and Territorial Disputes

Although the best solutions to territorial issues between municipalities and public water supply districts are reached through mutual agreement, affected parties should have the option to

request that the Public Service Commission determine the value of property when the parties cannot agree on a price. The commission has the experience and ability to make this determination fairly, and currently does so in resolving disputes between municipalities and rural electrical cooperatives. The committee believes that this option could be a valuable tool in resolving some territorial disputes and supports legislation allowing value determination by the commission. The determination should, however, not be considered to be any sort of regulation by the commission of either municipalities or public water supply districts . This legislation has been filed for the 2001 legislative session as part of HB 923 (See Appendix B, Item II).

4. Territory Detachments from Water Districts

The statutory changes made during the 2000 legislative session that require payment of a water district's entire debt by a municipality before annexed territory can be detached has made detachment very difficult. The committee believes that a more reasonable approach would restrict the necessary payment to debt related to the detached territory. The same restriction should also apply to the debt for which creditor permission is required. The committee supports legislation necessary to make this statutory change. The committee also supports repeal of the 2000 statutory change that allowed residents of public water supply districts in Franklin County to remove themselves from the district. Legislation to accomplish these changes has been filed for the 2001 legislative session as part of HB 923 (See Appendix B, Item III).

5. Water Rate Increase Phase In

Consumers should be protected from large increases in drinking water rates, as are sometimes requested in cases with new water plant construction and district-specific pricing. Currently, the Public Service Commission has the authority to require electric rate increases to be phased in. The committee supports legislation that would provide the commission with similar authority to phase in water rate increases over a several year period. This legislation has been filed for the 2001 legislative session as HB 289 (See Appendix B, Item IV).

6. Mandatory Sewer Connections

The recent court decision that prevents local sewer districts from requiring potential customers to connect to district lines jeopardizes financing for sewer extensions. The committee believes that sewer line extensions, where appropriate, will protect water quality and benefit most district customers. The public interest is best served by providing local districts with the authority to require connection. Charges and fees should be established to be equitable financially to both new and existing district customers. The committee supports a statutory change to provide sewer districts with this authority. This legislation has been filed for the 2001 legislative session as SB 256 (See Appendix B, Item V).

7. Regulation of Wastewater Treatment in Residential Subdivisions

The Departments of Health and Natural Resources have made significant progress in clarifying their respective jurisdictions in regulating wastewater treatment. Their progress is especially apparent with regard to the previously confusing situation for residential housing developments. Efforts like the recent publication of technical bulletins and other means of providing technical assistance to the public should be encouraged and expanded.

APPENDIX A

SUMMARY OF INDIVIDUAL TESTIMONY

(* = also submitted written materials)

I. JEFFERSON CITY, NOVEMBER 20, 2000

1. James Farley - Missouri Rural Water Association*

Mr. Farley outlined several court cases that considered problems that arise when territory within a water district is annexed into a municipality. He also proposed several statutory changes to address those problems, and recommended amendments on public notice requirements when water districts seek to expand and on the distribution of assets when a district is sold or dissolved. He further noted that the Department of Natural Resources' proposal to revise statutes and create water services districts would generate considerable confusion and is unwarranted.

2. Steven Mauer - Missouri Municipal League; Cities of Harrisonville and Buckner

Mr. Mauer noted that recent statutory changes have made it extremely difficult for water districts to detach property when it is annexed by a city. Current law requires payment of the entire debt of the water district. As a result, there is now a territorial deadlock on providing water service; similar problems with sewer service can be expected in the future. Some potential solutions may be found in the statutes for electric cooperatives and fire protection districts.

3. Daryl Kohler, William Waris - Cass County Public Water Supply District No. 9; Association of Water Districts

Mr. Kohler and Mr. Waris noted that water supply districts can often provide good service and that the best solution to territorial issues may be agreements suited to individual situations. Statutes should require parties to develop agreements in these cases.

4. James Briggs - City of Washington*

Mr. Briggs noted that the City of Washington had worked with two water districts in developing territorial agreements. Recent statutory changes have made these agreements more difficult.

5. David Shrow - Jackson County Public Water Supply District No. 13

Mr. Shrow outlined problems in negotiating with cities on territorial agreements. He also noted that customers within water district territory that receive city water vote on district matters even though they do not receive district services.

6. Frank Fitchner - Tri-County Water Authority; Jackson County Public Water Supply District No. 13

Mr. Fitchner stated that territorial issues are the most important concerns of water districts. Each situation is different and statutory changes are needed to protect all interests. Without a secure revenue stream, districts may not be able to service their debt.

7. Lawrence Hahn, Jeremiah Finnegan - Cass County Public Water Supply District No. 10*

Mr. Hahn and Mr. Finnegan outlined applicable federal, state, and case law, and noted that cities and developers have often not negotiated in good faith on territorial issues. Statutory changes are need to make agreements and settlements easier to reach. Cooperation is essential.

8. John Young, Carl Brown, James Penfold - Missouri Department of Natural Resources*

Mr. Young, Mr. Brown, and Mr. Penfold outlined their proposal for new statutes that would allow formation of water services districts to provide coordinated drinking water, stormwater, and wastewater utilities. Stakeholder group meetings will continue on this issue. They also discussed implementation of the new wastewater permit fee structure enacted last year, and the recent court case in Pulaski County that ruled that sewer districts could not require individuals to connect to their service. A statutory change may be needed in the latter case to ensure financing of sewer line extensions.

9. Robert Ross - DeKalb County Public Water Supply District No. 1

Mr. Ross stated that private water service providers should have more requirements for consumers services than they do under current Public Service Commission law. He also noted that proposed statutes on water services districts could make territorial issues even more confusing than they are currently.

10. Richard Tuttle - Franklin County Public Water Supply District No. 3

Mr. Tuttle noted that agreements on territorial issues can be achieved if parties negotiate in good faith. He outlined several cases where agreements were reached, and others where negotiations between a water district and a municipality were more difficult.

11. Louise Radmacher - Cass County Public Water Supply District No. 5

Ms. Radmacher outlined several cases where territorial agreements were developed, but noted that in some cases parallel service lines were constructed before agreements were reached.

12. Charles Zitnik - Kirkpatrick and Pettis

Mr. Zitnik stated that concerns about financing must be addressed in any territorial agreement between a municipality and a water district. Water rates are generally low in Missouri, and investors must be assured that their money will not be lost because a customer base is eroded.

13. Mary Herman - Jackson County Public Water Supply District No. 17

Ms. Herman noted that some negotiations between water districts and municipalities on territorial issues have been conducted in good faith, but others have required legal settlements in court.

14. William Johnson - Missouri Municipal League

Mr. Johnson outlined differences in several types of annexations and the requirements for cities to provide service in each.

II. JEFFERSON CITY, DECEMBER 11, 2000

1. Sheila Lumpe - Missouri Public Service Commission*

Ms. Lumpe outlined the roles of the Public Service Commission, the Missouri Department of Natural Resources, and the Missouri Department of Health in providing drinking water and wastewater services. The focus of the Public Service Commission is on regulation of for-profit companies. The commission must approve the construction of new water plants; any needed rate cases are discussed after construction. The commission also has the ability to settle territorial disputes if the affected parties are allowed to bring the dispute before the commission. The Clarence Cannon Wholesale Water Commission is a good model for regional development.

2. James Farley - Missouri Rural Water Association*

Mr. Farley noted that representatives of public water supply districts and municipalities had met to discuss territorial issues, as suggested by the interim committee at its last meeting. He presented specific proposals for statutory changes that had been agreed upon by the participants. These changes included outlining public notice requirements when water districts seek to expand and distributing assets to rate payers when a district is sold or dissolved.

3. Charles Bassett - Citizen of Pulaski County

Mr. Bassett noted the difficulties of developers of residential subdivisions in dealing with both the Department of Health and the Department of Natural Resources on wastewater treatment regulations. A single set of clear regulations for subdivisions is needed.

4. Charles Hamilton - Citizen of Pulaski County

Mr. Hamilton also stressed the need for clear wastewater regulations for subdivisions.

5. Daryl Kohler, William Waris - Association of Water Districts*

Mr. Kohler and Mr. Waris indicated their support for the statutory changes proposed by Mr. Farley. They also proposed several ideas that should be part of cooperative territorial agreements, and stressed the importance of not allowing territorial issues to leave rural water districts with only the customers that are most difficult and costly to serve. They further noted the need for more stakeholder discussions before the proposed concept of water services districts was formally considered.

6. Lowell Pearson - City of Licking*

Mr. Pearson outlined the difficult issue of providing water service to a new prison just outside the city limits of Licking, and the problems caused by last year's amendment to the detachment statutes that requires payment of all district debt before detachment can occur.

7. Myrtle Van Dusen - City of Licking

Ms. Van Dusen reiterated the difficulties that the City of Licking has had in attempting to provide drinking water services as the area experiences economic growth.

8. William Johnson - Missouri Municipal League*

To address current difficulties encountered in territorial disputes between cities and surrounding public water supply districts, Mr. Johnson presented proposed statutory changes on rights to serve, voting rights in district elections, and detachment procedures.

9. Robert Ross - DeKalb County Public Water Supply District No. 1

Mr. Ross noted that public water supply districts cannot continue to lose high-density areas to municipalities and serve remaining customers effectively. District-specific pricing could be very high for some customers, and future discussions of single-tariff pricing will have to consider territorial issues.

10. John Coffman - Missouri Office of the Public Counsel

Mr. Coffman noted that the Office of the Public Counsel is in favor of allowing the Public Service Commission to phase in water rates, as is the case currently for electric rates. Increases should be limited to 15% per year. He also stated that prudence reviews for new water plants should be done after construction, which leads to the best overall protection for consumers. Based on the experience of other states, pre-approval is more likely to lead to higher construction costs.

11. David Shrout - Tri-County Water authority; Jackson County Public Water Supply District No. 13.

Mr. Shrout stated that customers of public water supply districts should be protected from rate increases caused by territorial losses.

12. Elizabeth Dietzmann - Texas County Public Water Supply District No. 4

Ms. Dietzmann stated that there may not be a single statutory solution for all territorial disputes. Federal and case law must be considered in addition to state statutes. There are also regulations related to federal debt.

APPENDIX B

RECOMMENDED LEGISLATION

I. Proposed Text on Notice Requirements for Water District Expansion and Water District Dissolution Payments to Water Users

Section A. Sections 247.030, 247.085, and 247.215, RSMo 2000, are repealed and three new sections enacted in lieu thereof, to be known as sections 247.030, 247.085, and 247.215, to read as follows:

247.030. 1. Territory that may be included in a district sought to be incorporated or enlarged may be wholly within one or in more than one county, may take in school districts or parts thereof, and cities that do not have a waterworks system or cities whose governing body has by a majority vote requested that the city or part thereof be included within the boundaries of a public water supply district. For the purpose of this section, "city" means any city, town or village. The territory, however, shall be contiguous, and proceedings to incorporate shall be in the circuit court of the county in which the largest acreage is located. No two districts shall overlap.

2. Any two or more contiguous districts or any city and a contiguous district may, if there are no outstanding general obligation bonds relating to drinking water supply projects in either entity, by a majority vote of the governing body of each entity, provide for territory located in one entity to be annexed and served by the entity contiguous to the annexed territory. Notice of the proposed annexation shall be filed with the circuit court that originally issued the decree of incorporation for a district which is detaching territory through the proposed annexation or with the circuit court that originally issued the decree of incorporation for a district which is including a city or part thereof through the proposed annexation. The court shall set a date for a hearing on the proposed annexation and shall cause notice to be published in the same manner as for the filing of the original petition for incorporation; except that publication of notice shall not be required if a majority of the landowners in the territory proposed to be annexed consent in writing, and if notice of the hearing is posted in three public places within the territory proposed to be annexed at least seven days before the date of the hearing. If publication of the notice is not required pursuant to this section, the court shall only approve the proposed annexation if there is sworn testimony by at least five landowners in the area of the proposed annexation, or a majority of the landowners, if there are fewer than ten landowners in the area. If the court, after the hearing, finds that the proposed annexation would not be in the public interest, it shall order that the annexation not be allowed. If the court finds the proposed annexation to be in the public interest, it shall approve the annexation and the territory shall be detached from the one entity and annexed to the other. After the annexation is approved, the circuit court in which each district involved in the proceedings was incorporated shall amend the decree of incorporation for each district to reflect the change in the boundaries as a result of the annexation and to redivide each district into five subdistricts, fixing their boundary lines so that each of the five subdistricts have approximately the same area. A certified copy of the amended decree showing the

boundary change and the new subdistricts shall be filed in the office of the recorder of deeds and in the office of the county clerk in each county having territory in the district and in the office of the secretary of state of the state of Missouri.

3. The boundaries of any district may be extended or enlarged from time to time upon the filing, with the clerk of the circuit court having jurisdiction, of a petition by either:

(1) The board of directors of the district and five or more voters within the territory proposed to be annexed by the district; or

(2) The board of directors of the district and a majority of the landowners within the territory proposed to be annexed to the district.

If the petition is filed by the board of directors of the district and five or more voters within the territory proposed to be annexed by the district, the same proceedings shall be followed as are provided in section 247.040 for the filing of a petition for the organization of the district. Upon entry of a final order declaring the court's decree of annexation to be final and conclusive, the court shall modify or rearrange the boundary lines of the subdistricts as may be necessary or advisable. If the petition is filed by the board of directors of the district and a majority of the landowners within the territory proposed to be annexed, the publication of notice shall not be required, provided notice is posted in three public places within the territory proposed to be annexed at least seven days before the date of the hearing and provided that there is sworn testimony by at least five landowners in the territory proposed to be annexed, or a majority of the landowners if the total landowners in the area are fewer than ten. If the court finds that the annexation of such territory would be in the public interest, it shall enter its order granting such annexation. Upon the entry of [a final] such order [declaring the court's decree of annexation to be final and conclusive], the court shall modify or rearrange the boundary lines of the subdistricts as may be necessary or advisable.

4. The costs incurred in the enlargement or extension of the district shall be taxed to the district, if the district be enlarged or extended, otherwise against the petitioners; provided, however, that no costs shall be taxed to the directors of the district. A certified copy of the court's final order shall be filed in the office of the recorder and in the office of the county clerk in each county having territory in the district and in the office of the secretary of state.

[4.] 5. Should any voter who owns real estate that abuts upon a district once formed desire to have such real estate incorporated in the district, the voter shall first petition the board of directors thereof for its approval. If such approval be granted, the clerk of the board shall endorse a certificate of the fact of approval by the board upon the petition. The petition so endorsed shall be filed with the clerk of the circuit court in which the district is incorporated. It shall then be the duty of the court to amend the boundaries of such district by a decree incorporating the real estate in the same. A certified copy of this decree including the real estate in the district shall then be filed in the office of the recorder and in the office of the county clerk [of the] in each county [in which the real estate is located,] having territory in the district and in the office of the secretary of state. The costs of this proceeding shall be borne by the petitioning property owner.

247.085. 1. The board of directors of any public water supply district which is dependent upon purchases of water to supply its needs shall have power to sell and convey part or all of the property of the district to any city, owning and operating a waterworks system, in consideration whereof the city shall obligate itself to pay or assume the payment of all

outstanding bond obligations of the district, and to provide reasonable and adequate water service and furnish water ample in quantity for all needful purposes, and pure and wholesome in quality, to the inhabitants of the territory lying within the district, during such period of time and under such terms and conditions as may be agreed upon by the city and the board of directors of the district; provided, however, that no action shall be taken as provided herein until said city and public water supply district shall cause a printed notice of their intention to act under this section to be published in a manner prescribed for by law in a newspaper having a general circulation in said city and public water supply district, and a statement of the time and manner of said publication shall be recited in any agreement or contract executed hereunder.

2. Thereafter the board of directors may sell and convey any remaining property of the district and after payment of the debts of the district, other than bond obligations, the board of directors may use the funds of the district for the purpose of providing fire protection or for any other public purpose which in the opinion of the board will be beneficial to the inhabitants of the district, or in the event that the board of directors sells the entire water system of the district to any city as provided in this section, and the district has not had general obligation bonds outstanding within five years preceding the date of such sale, the board of directors may distribute to the water users of the district as of the date of the sale of the water system of the district to such city all or any portion of such funds on a pro rata basis. For the purposes of this subsection, any purchaser of water from such district for resale and any purchaser of water who has not purchased water from the district continuously for twelve consecutive months immediately preceding the date of such sale shall not be considered a water user and shall not receive any payment pursuant to this subsection.

247.215. 1. The board of directors of any public water supply district which is dependent upon purchases of water to supply its needs may sell and convey part or all of its water mains, plant, real estate, or equipment to any water corporation as defined in section 386.020, RSMo, if all bonds of the district, whether general obligation bonds constituting a lien on the property within the district or special obligation or revenue bonds constituting a lien on the income and revenues arising from the operation of the water system:

(1) Are to be paid in full, or

(2) A sum sufficient to pay all of such bonds together with interest accrued or to accrue thereon, together with all other items of expense incident to the payment of such bonds, shall be set aside from the proceeds of said sale and deposited with the fiscal agent named in the bonds for the purpose of full payment.

2. After the board of directors of any public water supply district has entered into a contract to sell part or all of its water mains, plant, real estate or equipment, pursuant to this section, an application shall be made by said board of directors to the circuit court which originally incorporated the district, which application shall set forth a copy of the contract entered into by the parties, and the facts concerning the bondholders and their rights, and requesting an order of the court approving or disapproving the contract.

3. Upon the filing of the application, the court shall set a time for the hearing thereof and shall order a public notice setting forth the nature of the application, a description of the property to be sold, and the time and place for the hearing, to be published for three weeks consecutively, in a newspaper of general circulation in the county in which the application is pending, the last publication to be not more than five days before the date set for the hearing.

4. If the court finds that the contract provides for the sale of all of the mains, plants, real estate and equipment of the district and protects the bondholders' rights, and also provides for the rendering of the necessary water service in the territory embracing the district, and is in the best interest of the residents and property owners of the district, it shall, by its decree, approve the contract and order dissolution of the district, provided that such dissolution is assented to by a two-thirds majority of the voters of the district, voting on the question and provided further, that the dissolution of the district shall not become final until after all its debts have been paid and the disposition of funds of the district has been fully carried out as hereinafter provided to the satisfaction of the court, after which a final decree may be entered.

5. If such water supply district has had general obligation bonds outstanding within five years preceding the date of assent by a two-thirds majority of the voters of the district approving the dissolution of the district, such water supply district shall not be finally dissolved, upon the sale of all of its assets, until final liquidation thereof and until the trustees of the district have first paid to the collector of the county, or counties, in which the district is located all of its remaining funds which shall be applied pro rata toward the payment and satisfaction of the taxes of the residents and property owners of the district on their respective personal and real property tax bills for the next ensuing year or years. In the event that the sum of money so paid to the collector would amount to less than the equivalent of one cent reduction in the tax rate and thus impose upon the collector a cost burden in excess of the money so paid, then and in that event said funds shall be paid over to the treasurer of the various school districts having real estate within the said water supply district in the ratio that the assessed valuation of such school district bears to the whole assessed valuation of the water supply district.

6. If such water supply district has not had general obligation bonds outstanding within five years preceding the date of assent by a two-thirds majority of the voters of the district approving the dissolution of the district, such water supply district shall not be finally dissolved, upon the sale of all of its assets, until final liquidation thereof and until the trustees of the district have first paid to the water users of the district as of the date of such assent all of the remaining funds of the district on a pro rata basis. For the purposes of this subsection, any purchaser of water from such district for resale and any purchaser of water who has not purchased water from the district continuously for twelve consecutive months immediately preceding the date of such assent shall not be considered a water user and shall not receive any payment pursuant to this subsection.

II. Proposed Text Allowing the Public Service Commission to Settle Territorial Disputes Between Municipalities and Water Districts

Section A. Section 247.160, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 247.160, to read as follows:

247.160. 1. Whenever all or any part of the territory of any public water supply district organized [under] pursuant to sections 247.010 to 247.220 is or has been included by annexation within the corporate limits of a municipality, the board of directors of any such district shall have the power to contract with such municipality for operating the waterworks system within such annexed area, or the board of directors, may, subject to the provisions of sections 247.160 and

247.170, lease, contract to sell, sell or convey, any or all of its water mains, plant or equipment located within such annexed area to such municipality and such contract shall also provide for the detachment and exclusion from such public water supply district of that part thereof located within the corporate limits of such city; provided, that in case of sale or conveyance, all bonds of the district, whether general obligation bonds constituting a lien on the property located within the district, or special obligation or revenue bonds constituting a lien on the income and revenues arising from the operation of the water system:

(1) Are paid in full, or

(2) A sum sufficient to pay all of such bonds together with interest accrued or to accrue thereon, together with other items of expense provided in such bonds, is deposited with the fiscal agent named in the bonds for the purpose of full payment, or

(3) Such city has entered into a firm commitment to pay in lump sum or installments not less than that proportion of the sum of all existing liquidated obligations and of all unpaid revenue bonds, with interest thereon to date, of such public water supply district, as the assessed valuation of the real and tangible personal property within the area annexed bears to the assessed valuation of all the real and tangible personal property within the entire area of such district, according to the official county assessment of such property as to December thirty-first of the calendar year next preceding, or

(4) Consent in writing is obtained from the holders of all such bonds.

2. In any such case in which the board of directors by agreement, leases, contracts to sell, sells or conveys the property of the district within the annexed area to such a municipality, an application shall be made by one of the contracting parties to the circuit court originally incorporating such district, which application shall set forth a description of the annexed area, that part thereof sought to be detached and excluded, a copy of the agreement entered into by the parties, the facts concerning bondholders and their rights, and requesting an order of the court approving or disapproving such contract.

3. Upon the filing of such application, the court shall set a time for the hearing thereof and shall order a public notice setting forth the nature of the application, the annexed area affected and sought to be detached and excluded, a description of the property within the annexed area leased, contracted to be sold, sold or conveyed, and the time and place of such hearing, to be published for three weeks consecutively, in a newspaper published in the county in which the application is pending, the last publication to be not more than five days before the date set for hearing.

4. If the court finds that the agreement protects the bondholders' rights and provides for the rendering of necessary water service in the territory embracing the district, then such agreement shall be fully effective upon approval by the court. Such decree shall also thereupon vest in said city the absolute title, free and clear of all liens or encumbrances of every kind and character, to all tangible real and personal property of such public water supply district located within the part of such district situated within the corporate limits of such city, with full power in such city to use and dispose of such tangible real and personal property as it deems best in the public interest.

5. In any case in which the board of directors of any public water supply district and a municipality cannot agree upon the fair and reasonable price to be paid for the lease, sale, or conveyance to the municipality of the physical property of such public water supply district within the territory included by annexation within corporate limits of the municipality, or if either party refuses to negotiate for the lease, sale, or conveyance of such property upon the

request of the other, either party may, within ninety days after the annexation of such territory, request that the public service commission determine the fair and reasonable value of such property for such lease, sale, or conveyance. The public service commission shall make such determination within sixty days after receipt of such request and any information necessary to make such determination. No action by the public service commission pursuant to this section shall be considered as regulation of the municipality or the public water supply district.

III. Proposed Text Changing Creditor Permission and Debt Payment Requirements in Detachment Procedures

Section A. Sections 247.031, 247.170, and 247.224, RSMo 2000, are repealed and two new sections enacted in lieu thereof, to be known as sections 247.031 and 247.170, to read as follows:

247.031 . 1. Territory included in a district that is not being served by such district may be detached from such district provided that there are no outstanding general obligation or special obligation bonds and no contractual obligations of greater than twenty-five thousand dollars for debt that pertains to infrastructure, fixed assets or obligations for the purchase of water within the area sought to be detached. If any such bonds or debt is outstanding, and the written consent of the holders of such bonds or the creditors to such debt is obtained, then such territory may be detached in spite of the existence of such bonds or debt, except such consent shall not be required for special obligation bonds or debt if the district has no water lines or other facilities located within any of the territory detached. Detachment may be made by the filing of a petition with the circuit court in which the district was incorporated. The petition shall contain a description of the tract to be detached and a statement that the detachment is in the best interest of the district or the inhabitants and property owners of the territory to be detached, together with the facts supporting such allegation. The petition may be submitted by the district acting through its board of directors, in which case the petition shall be signed by a majority of the board of directors of the district. The petition may also be submitted by voters residing in the territory sought to be detached. If there are more than ten voters in such territory, the petition shall be signed by five or more voters residing in the territory; if there are less than ten voters residing in such territory, the petition shall be signed by fifty percent or more of the voters residing in the territory. In the event there are no voters living within such territory proposed to be detached, then the petition may be submitted by owners of more than fifty percent of the land in the territory proposed to be detached, in which case said petition shall be signed by the owners so submitting the petition.

2. Such petition shall be filed in the circuit court having jurisdiction and the court shall set a date for hearing on the proposed detachment and the clerk shall give notice thereof in three consecutive issues of a weekly newspaper in each county in which any portion of the territory proposed to be detached lies, or in lieu thereof, in twenty consecutive issues of a daily newspaper in each county in which any portion of the tract proposed to be detached lies; the last insertion of the notice to be made not less than seven nor more than twenty-one days before the hearing. Such notice shall be substantially as follows: IN THE CIRCUIT COURT OF .....

COUNTY, MISSOURI
NOTICE OF THE FILING OF A PETITION FOR
TERRITORIAL DETACHMENT FROM
PUBLIC WATER SUPPLY DISTRICT NO. ....
OF ..... COUNTY, MISSOURI.

To all voters and landowners of land within the boundaries of the above-described district:

You are hereby notified:

1. That a petition has been filed in this court for the detachment of the following tracts of land from the above-named public water supply district, as provided by law:
(Describe tracts of land).

2. That a hearing on said petition will be held before this court on the ..... day of ....., 20 ..., at ...., ...m.

3. Exceptions or objections to the detachment of said tracts from said public water supply district may be made by any voter or landowner of land within the district from which territory is sought to be detached, provided such exceptions or objections are in writing not less than five days prior to the date set for hearing on the petition.

4. The names and addresses of the attorneys for the petitioner are:
..... Clerk of the Circuit Court of
..... County, Missouri

3. The court, for good cause shown, may continue the case or the hearing thereon from time to time until final disposition thereof.

4. Exceptions or objections to the detachment of such territory may be made by any voter or landowner within the boundaries of the district, including the territory to be detached. The exceptions or objections shall be in writing and shall specify the grounds upon which they are made and shall be filed not later than five days before the date set for hearing the petition. If any such exceptions or objections are filed, the court shall take them into consideration when considering the petition for detachment and the evidence in support of detachment. If the court finds that the detachment will be in the best interest of the district and the inhabitants and landowners of the area to be detached will not be adversely affected or if the court finds that the detachment will be in the best interest of the inhabitants and landowners of the territory to be detached and will not adversely affect the remainder of the district, it shall approve the detachment and grant the petition.

5. If the court approves the detachment, it shall make its order detaching the territory described in the petition from the remainder of the district, or in the event it shall find that only a portion of said territory should be detached, the court shall order such portion detached from the district. The court shall also make any changes in subdistrict boundary lines it deems necessary to meet the requirements of sections 247.010 to 247.220. Any subdistrict line changes shall not become effective until the next annual election of a member of the board of directors.

6. A certified copy of the court's order shall be filed in the office of the recorder and in the office of the county clerk in each county in which any of the territory of the district prior to detachment is located, and in the office of the secretary of state. Costs of the proceeding shall be borne by the petitioner or petitioners.

247.170. 1. Whenever any city owning a waterworks or water supply system extends its corporate limits to include any part of the area in a public water supply district, and the city

and the board of directors of the district are unable to agree upon a service, lease or sale agreement, or are unable to proceed [under] pursuant to section 247.160, then upon the expiration of ninety days after the effective date of the extension of the city limits, that part of the area of the district included within the corporate limits of the city may be detached and excluded from the district in the following manner:

(1) A petition to detach and exclude that part of the public water supply district lying within the corporate limits of the city as such limits have been extended, signed by not less than twenty-five voters within the water supply district, shall be filed in the circuit court of the county in which the district was originally organized.

(2) The court, being satisfied as to the sufficiency of the petition, shall call a special election of the voters of the district at which election the proposal to detach and exclude the part of the district lying within the corporate limits of the city shall be submitted to the voters in the entire district for a vote thereon. The election shall be conducted within the district by the election authority.

(3) The ballot shall briefly state the question to be voted on.

(4) In order to approve the detachment and exclusion of any part of the area in a public water supply district, the proposal shall require the approval of not less than a majority of the voters voting thereon.

(5) The election authorities shall thereafter promptly certify the result to the circuit court. The court, acting as a court of equity, shall thereupon without delay enter a decree detaching and excluding the area in question located within the corporate limits of the city from the public water supply district; except that before the decree detaching and excluding the area becomes final or effective, the city shall show to the court that it has assumed and agreed to pay in lump sum or in installments not less than that proportion of the sum of all existing liquidated general obligations and of all unpaid revenue bonds and interest thereon to date, of the water supply district as the assessed valuation of the real and tangible personal property within the area sought to be detached and excluded bears to the assessed valuation of all of the real and tangible personal property within the entire area of the district, according to the official county assessment of property as of December thirty-first of the calendar year next preceding the date of the election, and in addition thereto that the city has assumed and agreed to assume or pay in a lump sum all contractual obligations of the water district that are greater than twenty-five thousand dollars for debt that pertains to infrastructure, fixed assets or obligations for the purchase of water within the area sought to be detached and excluded, and to pay the court costs.

(6) The decree shall thereupon vest in the city the absolute title, free and clear of all liens or encumbrances of every kind and character, to all tangible real and personal property of the public water supply district located within the part of the district situated within the corporate limits of the city with full power in the city to use and dispose of the tangible real and personal property as it deems best in the public interest.

(7) If the proposal fails to receive the approval of the voters the question may be again presented by another petition and again voted on, but not sooner than six months.

(8) Any and all sums paid out by the city under this section, other than the costs of the election, shall be administered by the circuit court for the benefit of the holders of the then existing and outstanding bonds of the district, and the remainder of such sums, if any, shall be delivered to the district to be expended in the operation, maintenance and improvement of its water distribution system.

2. Upon the effective date of any final order detaching and excluding any part of the area of any public water supply district, or leasing, selling or conveying any of the water mains, plant or equipment therein, the circuit court may, in the public interest, change the boundaries of the public water supply district and again divide or redivide the district into subdistricts for the election of directors in conformity with the provisions of section 247.040, without further petition being filed with the court so to do.

[247.224. Any person who resides within the boundary of a public water supply district located in any county of the first classification with a population of more than eighty thousand and less than eighty-three thousand inhabitants and who is unable to receive services from such district due to the district's failure to provide such services may elect to be removed from such district by sending a written and signed request for removal via certified mail to the district. The district shall, upon receipt of such request, remove such resident from the district. If the resident elects to be removed from the district, the resident shall compensate the district for any costs incurred by the district for such resident's removal from the district and for any attempts by the district to provide service to such resident prior to the certified date that the district received the request for removal.]

IV. Proposed Text to Allow the Public Service Commission to Phase In Water Rate Increases

Section A. Chapter 393, RSMo, is amended by adding thereto one new section, to be known as section 393.157, to read as follows:

393.157. If, after hearing, the commission determines that any water corporation should be allowed an unusually large increase in the corporation's rates, the commission, in its discretion, need not allow the full amount of such increase to take effect at one time, but may instead phase in such increase over a reasonable number of years. Any such phase-in shall allow the water corporation to recover the revenue which would have been allowed in the absence of a phase-in and shall make a just and reasonable adjustment thereto to reflect the fact that recovery of a part of such revenue is deferred to future years. In order to implement the phase-in, the commission may, in its discretion, approve tariff schedules which will take effect from time to time after the phase-in is initially approved.

V. Proposed Bill Text to Allow Sewers Districts to Enforce Mandatory Connection

Section A. Chapter 644, RSMo, is amended by adding thereto one new section, to be known as section 644.027, to read as follows:

644.027. Nothing in sections 644.006 through 644.150, RSMo, shall be deemed to restrict, inhibit or otherwise deny the power of any city, town or village, whether organized under the general law or by constitutional or special charter, any sewer district organized under chapter 204, RSMo, or chapter 249, RSMo, any public water supply district organized under chapter 247, RSMo, or any other municipality, political subdivision or district of the state which owns or operates a sewer system that provides for the collection and treatment of sewage, to require the owners of all houses, buildings or other facilities within a municipality, political subdivision or district to connect to the sewer system of the municipality, political subdivision or district when such sewer system is available.